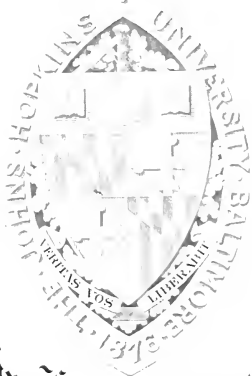
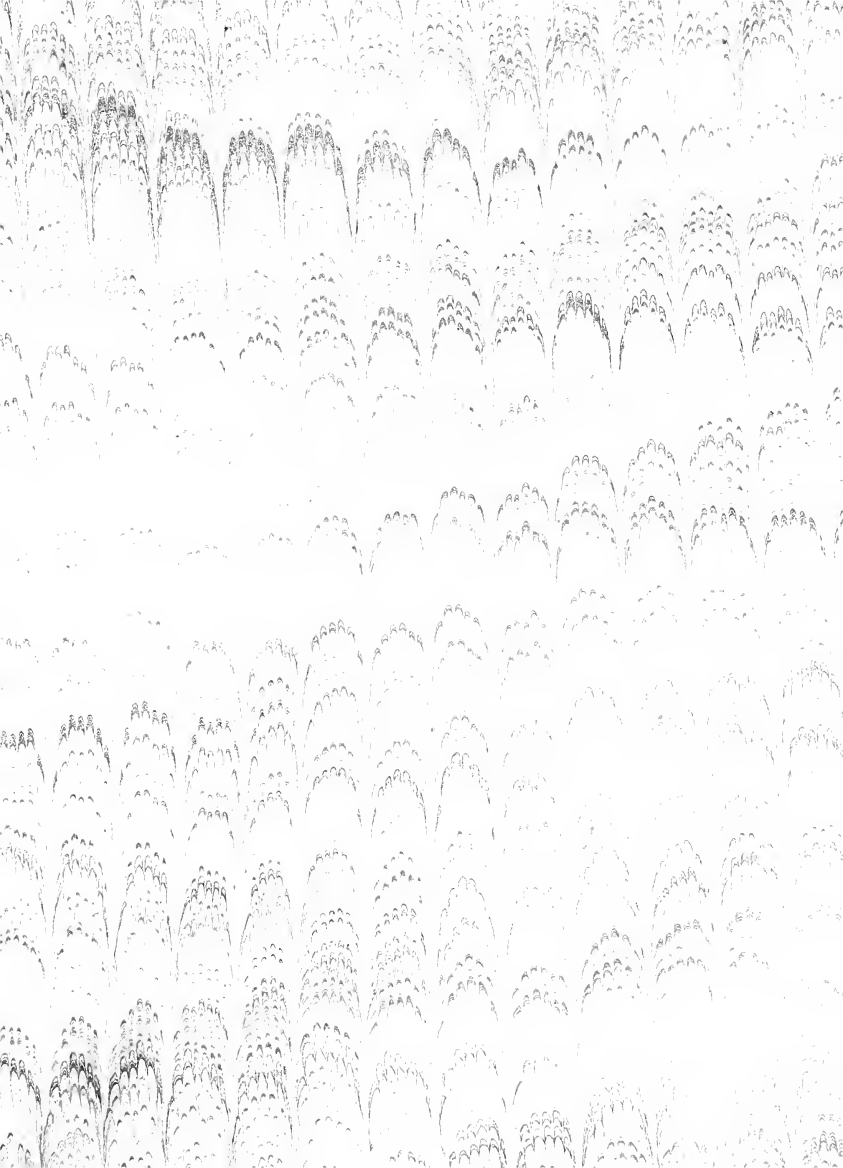




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AZOO LAND COMPACTS

CHARLES L. L. L.

Dissertation, presented to the
Board of University Studies
of the Johns Hopkins University
for the degree of
Doctor of Philosophy.

1890.

I. L. C. 1992

11. Do you have any other comments?

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INTRODUCTION.

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THE WESTERN TERRITORY OF GEORGIA.

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At the close of the Revolution the territory north of the thirty-first parallel which is now included in the States of Alabama and Mississippi was the subject of various conflicting claims. South Carolina contended that this territory was comprised within the limits of her original charter; Georgia claimed it by virtue of the commissions issued to Governor Wright; the United States maintained that it had been withdrawn from the domain of the colonies by later acts of the Crown, conquered by the nation in the Revolution, and ceded to the nation by the treaty of peace; while Spain denied England's right to cede lands below 32° 30' and held that region as a conquest from England. Georgia's assertion of title, re-enforced in 1787 by the withdrawal of South Carolina,¹ was resisted by the federal authorities. In 1788 a proposed cession of territory below 32° 30' was rejected by Congress because it contained as a condition the guarantee of the remainder, and in 1797 a committee of the Senate made a report strongly adverse to the State's claim.² The final victory, however, remained with Georgia. In the compromise of 1802 all her demands were acceded

¹ Except from a narrow strip on the north, soon ceded to the United States. Spain relinquished her claim in 1795.

² Journals of Congress, IV, 834; American State Papers, Public Lands, I, 79.

to, and in 1827 the validity of her title was affirmed by the Supreme Court in an opinion which thus sums up the matter: "There are several reasons for putting the claim of the United States out of the question. She has abandoned it, and it is very clear could never have sustained it. The very ground on which she denied the capacity of Spain to conquer or take by cession, the territory on the Mississippi, was fatal to the pretensions set up by her against Georgia and South Carolina, to wit, that Spain could not acquire by conquest a territory within the limits claimed by an ally in the war. x x x x There was no territory within the United States that was claimed in any other right than that of some one of the confederated states; therefore there could be no acquisition of territory made by the United States distinct from, or independent of some one of the States".¹

Aside from the question of Georgia's title to the lands, there were serious difficulties in the way of making use of them. They were occupied by the Chickasaws, Choctaws, Cherokees, and Creeks, and over these tribes the federal government claimed and exercised an immediate protectorate. "No one could say what was

¹ Harcourt vs. Gaillard, 11 Wheaton, 523. See also the arguments presented in Morse's Description of Georgia Western Territory, 19-24, and cf. Fletcher vs. Peck, 1 Cranch, 57. The documents bearing on Georgia's claim were collected by the Attorney-General in 1796 and are printed in State Papers, Public Lands, I, 34-37.

the value of Georgia's title, for it depended on her power to dispossess the Indians; but however good the title might be, the State would have been fortunate to make it a free gift to any authority strong enough to deal with the Creeks and Cherokees alone.¹ The attacks of the Southern Indians on frontier settlements were kept up by the intrigues of the Spaniards, themselves sure to oppose by force all attempts to settle the region south of the Yazoo. The value of western lands for commercial and agricultural purposes depended almost entirely on the navigation of the Mississippi, over which Spain exercised sole control. So strongly was this felt in the West that to gain the right to navigate the Mississippi many were willing to leave the Union and become Spanish subjects. In the light of these difficulties Georgia was quite ready to reap a small financial gain by disposing of the lands on the first offer of favorable conditions.

¹ Henry Adams' History of the United States, I, 303.

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I.

THE LAND COMPANIES OF 1789.

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THE SOUTH CAROLINA YAZOO COMPANY.

The advantages of a commercial settlement on the Mississippi near the mouth of the Yazoo were readily apparent. The only obstacle seemed to be the opposition of Spain and the Indians, and to remove this a number of citizens of South Carolina and Georgia directed their efforts. At present they reckoned without the United States, and thus, as events proved, without their host. In 1765 application was made to Georgia for a grant of lands. As that State "did not yet feel ready to dispose of her territory", nor, doubtless, to protect it against the Indians and Spaniards, all that was obtained was the organization of a county to be known as Bourbon, in which when lands were granted out actual settlers were to have the preference at a price not exceeding a quarter of a dollar an acre. This county, which continued in existence three years, was bounded by the Mississippi, the Yazoo, the thirty-first parallel, and the limit of the territory relinquished by the Indians.¹ The consent of the Choctaws to the proposed establishment was sought by the purchase from one John Wood of a deed he had obtained from them to a tract of two or three million acres lying near the mouth of the Yazoo. For colonists the projectors

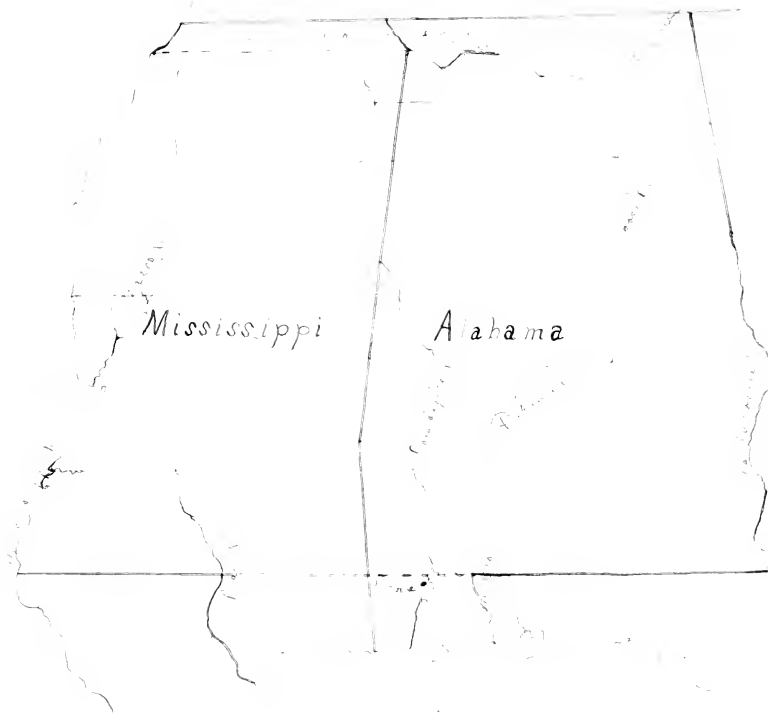
¹ State Papers, Public Lands, I, 100.

usually looked toward Kentucky, where John Helder¹ engaged to conduct four hundred families to Walnut Hills (now Vicksburg) before the end of 1789, but in the execution of this contract he failed entirely. In the meantime the original plan of the projectors had been enlarged, largely through the influence of Major Thomas Washington.² Articles of association were drawn up and adopted, constituting a company to be known as the South Carolina Yazoo Company. The original members were but four in number, Washington, of Georgia, and Alexander Moultrie, William Clay Snipes, and Isaac Huger, of South Carolina, Moultrie being appointed director. Among those who joined later was the famous Creek chief Alexander McGillivray. To the former idea of a commercial station there was now added the plan of securing an extensive territory and opening it to agricultural settlers.³

¹ A noted pioneer captain in the Revolution. Collins' History of Kentucky, I, 13, 255; Folsom's Narrative of a Journey down the Ohio and Mississippi, 22 note.

² Washington, whose real name was Walsh, was an unprincipled speculator, later hanged at Charleston for countenancing South Carolina indents (Georgia Gazette, March 21, 31, 1791). He seems to have been closely associated with John Sullivan, leader of the mob which insulted Congress in 1783, who planned operations against Spain or the United States with equal facility. See White's Statistics of Georgia, 48; Gayarré's History of Louisiana (edition of 1885) III, 213; Haywood's Civil and Political History of Tennessee, 176; Magazine of American History, III, 45: Diplomatic Correspondence, 1783-1789, I, 12, 37, 50.

³ Report of the Secretary of the South Carolina Yazoo Company I, 15-23, 25; Gayarré's Louisiana, III, 72, 275.



1 South of 1861.

THE GRANT OF 1789.

Accordingly on November 20, 1789, a petition was presented to the Georgia Legislature. It set forth that the company, having already commenced a settlement under the Bourbon act, desired a confirmation of that interest. In this they were actuated "as well from a motive of general good to mankind and a happiness and prosperity of this State and the union, as their own". They had "in respect to their own settlements established Connections in Europe, America, and in this State; whereby it is certain that x x x x an african trade and European Commerce will take place at the Yazoo to an immense and vast amount".¹ Applications were at the same time received from the Virginia Yazoo and the Tennessee companies. A bill was brought into the Senate and after amendment it passed on December 7 by a vote of six to three. When it reached the House, there appeared another set of petitioners, the Georgia Company, offering a much higher price for the land. Efforts to insert this company among the other applicants failed, as did also a motion to increase the amount to be paid, and the bill passed without amendment and received the Governor's signature on the twenty-first of December. ~

¹ Papers of U.S. Supreme Court, *Holbrooke et al. vs. State of Georgia et al.*, H.

² Georgia Gazette, January 7, 1790.

This act granted to the South Carolina Company a tract bounded by the Mississippi, the thirty-third parallel, the Tombigbee, and a line drawn east from a point just above Natchez, containing over 10,000,000 acres of what is now southern Mississippi and Alabama. ¹ The Virginia Company received 11,100,000 acres, being all the land west of Little Bear Creek and the Tombigbee and north of the thirty-third parallel. The Tennessee Company's grant included 1,000,000 acres in the region of the Tennessee. The lands in each case were to be reserved as a pre-emption for two years, and at the end of that period on the payment of the stipulated amounts grants were to issue to the companies as tenants in common in fee simple. The amounts to be paid were: South Carolina Company, \$56,964; Virginia Company, \$93,741; Tennessee Company, \$48,878. The companies were also to extinguish the Indian claims, nor was the State to be put to any expense in keeping the peace between them and the Indians or made liable for the claims of previous settlers. ²

¹ See map, page .

² American State papers, Indian Affairs, I, 114; Watkins' Georgia Digest, 367; Document A, Supreme Court papers.

JAMES O'FALLON, AGENT OF THE COMPANY.

The South Carolina Company at once began active measures toward forming a settlement. As their agent in the West they selected Dr. James O'Fallon, an old Revolutionary soldier, whom they likewise admitted as a proprietor. He was instructed to proceed at once to Lexington, Kentucky, to bring Holder to account, and, if it could be done peaceably, to go down to the Walnut Hills with four or five hundred settlers. He should be careful to cultivate the friendship of the Indians, and after effecting a settlement should proceed to New Orleans and "take every possible step for securing the concurrence and favor of the Spanish Government". He also received private instructions, the contents of which are not known. ¹ Edmund Phelon was soon afterward sent to the Yazoo country to prepare the Choctaws for the intended settlement. ²

O'Fallon set out in February, 1790, reaching Lexington about the beginning of May. On his way he secured the co-operation of General McDowell of North Carolina, of Colonel Fane of South Carolina, and particularly of John Sevier, who undertook to act as sub-agent for the Tennessee settlements. Each was prom-

¹ Secretary's Report, I, 20, 21.

² See his deposition, State Papers, Public Lands I, 16'.

ised a share in the company's purchase. 1

RELATIONS WITH SPAIN.

On his arrival in Kentucky, O'Hallon was brought into close relations with General James Wilkinson and thus entered the maze of Spanish intrigues. Wilkinson was attempting to effect the separation of Kentucky from the union and for his services received a regular pension from Spain. Informed of the company's designs by Major Washington in February, 1790, he had discussed the subject with Miro, the Spanish governor, and wrote the company, offering to supply their need of a man of experience and popularity who should act as agent and secure the assistance of Miro, without which the enterprise would be wholly impracticable. They must, he said, obtain through Spain farther concessions from the Indians, for their Choctaw deer was not worth a pinch of snuff. 2

¹ Secretary's Report, 26, 30, 31. These measures, as well as the later grants to Kentuckians, were approved by the company, but never formally confirmed.

² Wilkinson to Moultrie, Raper, Smith, and Washington, January 4, 1790. A translation of the original, copied from the archives of Spain, is in the library of Tulane University. Part of it has been re-translated by Gagliardi (III, 27). The version in the Secretary's Report (I, 24) differs somewhat from the Spanish copy.

For an account of the interesting history of the Tulane University collection see Gagliardi's letter in the Times-Democrat of June 3, 1883, and his communication to Congress (House Misc. Docs., 46th Congress, second session, Vol. II, No. 22).

Moultrie promptly accepted the offer of Wilkinson's services, but informed him that the agency had already been granted. Of this letter O'Fallon was the bearer. 1

Wilkinson had informed Miro of the company's designs and had been told that the territory of company's grant, so far as it did not belong to the Indians, was subject to Spain and would remain so. 2 Convinced of the necessity of gaining over Miro, O'Fallon wrote him a remarkable letter. After setting forth pompously his relations to the company and his well-known devotion to the interests of Spain, he says that, having long ago conceived this great project, he had enlisted in it the members of the company and obtained from them plenary powers for its execution. Without their having at first suspected his object, he had "insensibly prevailed upon them to acquiesce in "his" political views (after obtaining the concession), and led them to consent to be the slaves of Spain, under the appearance of a free and independent colony, forming a rampart for the adjoining Spanish territories, and establishing with them an eternal, reciprocal alliance, offensive and defensive". Separation from the Union had been resolved upon. In return for her secret co-operation Spain would

1 Secretary's Report, I, 25, 26; Casarré, III, 221.

2 Letters of January 10 and April 30, Casarré III, 171, 172.

receive everything except the sacrifice of their liberty, of conscience and of their civil government. O'Fallon's authority for these statements would appear when he arrived in New Orleans and transmitted his secret instructions. 1 Not long afterward, Wilkinson wrote to Miro, endorsing O'Fallon's plans and adding, "If the sentiments which he invariably expresses are to be believed (and I am inclined to put faith in them), he is a great friend to Spain." 2

In August Miro sent to Madrid copies of all this correspondence together with his comments upon it. He showed the advantages of such a settlement in defending Louisiana against the United States and in extending the commerce of New Orleans, yet he doubted the policy of "taking a foreign state to board". All the benefits of such a settlement, he argued, could be secured if Spain would people the territory on her own account. In case a middle course was desired, it might be proper to permit the company to colonize the territory as subjects of Spain and under the regulations imposed upon all immigrants. Miro added that he had secured the opposition of all the Indian tribes to

¹ Lexington, Nov. 24. Spanish MSS., Tulane University; almost entire in Gajarré, III, 202-203. O'Fallon signs himself "Santiago O'Fallon, Agente General en los Establecimientos Occidentales de la Carolina del Sur en el Yaso".

² Gajarré, III, 203.

the three land companies and had promised to supply the Indians with powder and ball for the defence of their rights. 1

How far the South Carolina Company was involved in intrigues with Spain is difficult to determine. As early as October, 1739, they had written to Colonel Holzer to cultivate the friendship of the Spaniards as much as possible and conceal nothing from them. "We confidently flatter ourselves" said they, "that we shall form a highly advantageous rampart for Spain, and that we shall ourselves feel that it is our interest that such should be the case". 2 This letter contained nothing which indicated the least subordination to the United States, and Miro inferred from it that the company intended to form an independent state. In the elaborate plan of colonization afterward drawn up by the secretary they were recommended to procure an efficient civil establishment from Georgia and when the population should reach sixty thousand, to form a new state under the laws of the Union. 3 Small weight, however, should be attached to these expressions, since the pamphlet in which they are found was designed for the eye of the federal authorities and the plan represents at best

1 Gajarré, III, 293-300.

2 Gajarré, III, 273.

3 Report of the Secretary, III, 9, 12.

only the opinions of the Secretary. 1 If O'Fallon expressed the ideas of the company, there is no question. It seems possible from the exaggerated tone of his letter that here, as in some other respects, he exceeded his authority. To pronounce a final opinion would be unsafe in the absence of O'Fallon's secret instructions, but the fact that he claimed those instructions as authority for his proposals throws strong suspicion upon the company. 2

1 The copy of this report in the library of the Maryland Historical Society has the following on the fly-leaf:
"To George Washington Esqr; President of the United States
From his most Ob^d; hum: Serv: AxF; Moultrie Presidt So;
Car: Yaz: Comd; July 13, 1791".

2 I have followed the usual view of Wilkinson's treason. This has been attacked by Mr. James Wilkinson of New Orleans in the Times-Democrat of April 15 and May 20, 1883, but the letters quoted by Sagaré seem to me decisive, strengthened as they are by Clark's Proofs of the Corruption of General Wilkinson and the letter of Trajo to Cervillos (Henry Adams' History of the United States, III, 312).

O'FALLON IN KENTUCKY.

The action of Georgia in disposing of her western territory had not escaped the notice of the federal authorities. The matter was discussed by the Cabinet as early as April 1790,¹ and in August Washington issued a proclamation setting forth the law and treaties on the subject and directing compliance therewith.² One month later, O'Fallon, acting, we are told, on the advice of General St. Clair, addressed a letter to the President in which he asked permission to arrange for trade between the Indians and the people of his colony and to purchase more lands within the company's charter. "Without such trust, evils may happen". So far as is known, no notice was taken of this letter.³

In the meantime O'Fallon went basily on with his arrangements, even claiming for them the authority of Congress.⁴ By October he writes that all his preparations are completed. Extensive contracts were made for negroes and provisions, transportation and shelter. In his last dispatch to the company, dated Kentucky, November 6, he says that he has learned from his clerk

¹ Washington's Diary, 129 ff; Jefferson's Works, VIII, 177.

² American State Papers, Indian Affairs, I, 112, 113.

³ Ib, 115; Secretary's Report, I, 31, 32.

⁴ Indian Affairs, I, 114.

Ag in 1911, F. J. O'Fallon, a former
 member of the I. O. O. F. and a member of the
 I. O. O. F. and a member of the I. O. O. F.
 was arrested and the district attorney of Kentucky was ordered to
 cause O'Fallon's arrest and prosecution according to law. In
 case these measures did not prove sufficient, military interven-
 tion was proposed. After this O'Fallon's extensive operations
 suddenly disappeared. Wilkinson accepted him, his associates fell
 away, and he married the sister of George Henry Clark and resided
 in Kentucky. The company heard nothing more from him, and in
 August 1911 he left Walnut Hills. The services of a dis-
 trict attorney were not needed; Washington's proclamation had

1 Secretary's Report, I, 35; Military articles of contract, etc.
State Papers, Indian Affairs, I, 116-117. Five hundred
acres were offered to the first woman who should land in
that territory and five hundred more to the man who should bring
forth in it the first live child, boy and girl living.

Wilkinson to Philip Nolan, February 22, 1762, noted in Claiborne's History of Mississippi, 1, 224.

5. Forno's Gazette, March 14, 1904; La Cruz, April 14.

² Jefferson's Works, III, 216.

Ibid., 1200; S. Clap, *Id.* 1201; A. Clap, *Id.* 1202.

been sufficient. ¹ Both Spain and the Indians had made various preparations to oppose the expedition, and the consequences of a collision might have been serious. ² The federal authorities insisted upon and carried the point that the Indians had a right to their lands independent of the States within whose limits the lands lay and that no claim to such territory was valid unless based on a treaty made with the consent of the United States. ³

¹ Wilkinson to Nolan, ante; Pope's Tour through the Southern and Western Territories of the United States, 29; Forman's Journal, 52; Marshall's History of Kentucky, I, 372, 373; State Papers, Public Lands, I, 105; Fermo's Gazette, May 4, 1791, and other newspapers of the time. No record of a prosecution of O'Fallon exists, either in the Department of Justice or in the District Court.

² Miro's letter, ante; Georgia Gazette, January 6, 1791; Pope's Tour, 23, 25.

³ Cf. Jefferson's Works, III, 230, VIII, 127.

A T T E M P T S A T P A Y M E N T.

Efforts to settle the lands had failed; efforts to complete the purchase failed also. On August 10, 1790, the company paid into the state treasury in Georgia paper medium the amount of \$2,703.46, and on September 11 a further payment of \$2,122.86 was made. ¹ On the nineteenth of December, 1791, just before the expiration of the period allowed by the act, representatives of the company tendered the State treasurer the remainder in South Carolina paper money, Continental money of 1776, and Georgia certificates of various dates. ² This the treasurer declined to receive, and a formal certificate of such tender and refusal was given. ³ The earlier payments remained in the treasury. The State authorities held that the act contemplated payment in specie only and that, if any doubt had existed on this point, it was removed by a resolution passed by the legislature in July, 1790, directing the treasurers after the following August to receive only gold and silver in discharge of debts due the State. ⁴

¹ Supreme Court papers, E and F.

² Specimens are on file with the papers in the Supreme Court.

³ Supreme Court papers, G.

⁴ Ibid., G; State papers, Public Lands, I, 01.

THE SOUTH CAROLINA COMPANY IN THE
SUPREME COURT.

When the company is next heard from, it is in the Supreme Court of the United States. In 1796 through their attorney, Jared Ingersoll, they filed a bill in equity against the State of Georgia and the Georgia and Georgia Mississippi companies, grantees of the lands under the sale of 1793, who, it was alleged, had purchased with full knowledge of the prior claim. The court was asked to decree that their interest be held absolute and a grant issued on paying the amount due in any money current in Georgia.¹ The only ones to file an answer were the members of the Georgia Mississippi Company, who denied previous knowledge of the complainant's title and urged that, having disposed of the land before the bill was filed, they ought not to be required to furnish documents. The case was set for a hearing in August, 1797, and adjourned until the next term. In January, 1798, the eleventh amendment to the Constitution was declared in force. Its effect was to put an end to all suits then pending between a state and citizens of another state,² and as the Yazoo suit was of that char-

¹ The court was also asked to determine what interest, if any, Washington's heir could have in their claim, since Washington had dissipated the funds of the company to a far greater amount than his contribution. For a later petition in behalf of Washington, see House Journal, 10th Congress, 161.

² Hollingsworth vs. Virginia, 3 Ballis, 370.

...all proceeds of it were stopped. 1

THE COMPANY BEFORE CONGRESS.

One more report was left; the company might appeal to Congress. 2 The Georgia session of 1801 had left to Congress the task of settling with the land claimants in the Mississippi territory, and Madison, Gallatin, and Levi Lincoln were appointed to receive petitions and report. In their petition to these commissioners the company, maintaining that they had fulfilled their part of the contract with Georgia, claimed indemnification for the loss of their lands and for the expenses incurred in connection with the grant,³ with full consideration of the loss of "the most precious years of their lives, and the sacrifice of that domestic happiness, which it is beyond the power of language to express". The question of their compliance with the conditions of the grant turned largely on the medium of payment which the act

¹ *Houltrie et al. vs State of Georgia et al.*, papers of the Supreme Court, 1798; *Public Lands*, I, 137.

² Appeal had been made to the executive after the expiration of Washington's term. See *John Adams' Works*, VIII, 311.

³ The United States was asked to compensate the company for the money advanced to O'Fallon, who was engaged, not only in raising an expedition illegally, but, in view of his belief in his own letters, in founding a settlement independent of the United States and controlled by Spain!

contemplated. On its face the act simply directed to be paid "the amount of sixty-six thousand nine hundred and sixty-four dollars". That payment in paper was thus meant could be shown by collateral evidence only. For this purpose the company introduced the testimony of several who had been members of the legislature in 1789 and had understood that the lands were to be paid for in paper, as well as a protest in which the Speaker of the House and thirteen others had objected to the sale because it permitted payment in audited certificates.¹ Attention was also called to their petition of 1789, offering payment "in public securities or the money of the state".

The commissioners reported February 13, 1803, that in their opinion the companies had no equitable claim upon the government for the land or for compensation. In the following December the company preferred their claim directly to Congress. This was referred to a committee of which Nicholson was chairman, and on January 7, 1804, they reported that they were decidedly of the opinion that the company had no claim whatever upon the United States. They held that the act should be interpreted by itself, and that if extraneous matter were to be brought in, the resolution of June, 1780, forbidding payment in certificates, would be fatal to the petitioners' claim. The House resolved to give the company

¹ Supreme Court papers; American Gazette, January 7, 1790.

on more chance. On the sixteenth of January Sullivan was heard in their behalf at the bar of the House and the matter was re-committed. The opinion of the committee remaining unchanged, in March their report was laid on the table and the whole subject was dropped. 1

- 1 Annals of Congress, December 2, 1803, January 7, 11, March 13, 1804; State Papers, Public Lands, I, 133, 135-172, 197; Supreme Court papers.

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P A T R I C K H E N R Y
A N D T H E V I R G I N I A Y A Z O O C O M P A N Y .

In the preface to the fifth volume of the Virginia Calendar of State Papers ¹ Mr. Sherwin McRae speaks at some length of the dangers that threatened the United States in this period through the great schemes of land speculators. Our escape from these schemes, he tells us, was owing to the patriotism and public virtue of Patrick Henry, who in a deposition made in 1777 ² says that on becoming a member of the first Virginia convention and the first Continental Congress "he determined with himself to disclaim all Concern and Connexion with Indian Purchases", although shares were frequently offered him. The reasons given for this resolution were the enormous extent of the purchases, the probability of being called on to decide disputes over such claims, and, in event of war, the likelihood of the soil being claimed by the American States - a reason which may indicate the man of business as well as the patriot. Thus, according to Mr. McRae, the great evils involved in the success of the Indiana and New Madrid Companies were avoided.

Although his action in these circumstances deserves

¹ Pp. IV - VII.

² Virginia Calendar of State Papers, I, 329. See also Collins' History of Kentucky, II, 191.

credit, Patrick Henry did not always hold "good" real-estate companies. The opportunities for successful investment were too evident to escape the eye of one who saw the good qualities of lands so readily. ¹ In the summer of 1769 he began to enquire of Gwynson, then Senator from Virginia, respecting the title to the lands in the region of Hetches and the attitude of Spain toward the navigation of the Mississippi and emigration from the United States. ² Assured that the territory unquestionably belonged to Georgia, Henry, with Judge Paul Carrington, David Ross, Abraham B. Venable, Francis Watkins, and others, later in the same year formed the Virginia Yazoo Company for the purchase of lands from the State of Georgia; and, recognizing the advantages which the South Carolina Company claimed, they made overtures for a consolidation. ³ When this attempt failed, they petitioned the Georgia Legislature and received the grant described above. Their plans, they declared, did not involve immediate colonization. Every person was expressly forbidden to settle within their bounds, their intention being "first to complete their petitions to the State for

¹ H.C.Tyler's Patrick Henry, 361.

² See Gwynson's letters of June 11 and September 25 in H.C. Tyler's Letters and Times of the Tylers, I, 166-171.

³ Report of the Secretary of the South Carolina Company, I, 13.

the Indians' parents; next to this to "be in the claims - possibly, to
the, and to have the participation and approbation of the Federal
Government for the settlement, and that the first Emigrants shall
be accompanied with civil & military officers locally appointed".¹

With this exception the history of the company closely
resembles that of the South Carolina Company. Two small petitions
were made, the later tender in full was refused, and the earlier
amounts were refunded to the company's agent, whose acceptance
drew from such a small sum. It was a need to bring suit against
the State and counsel was retained for that purpose, but on this
nothing came. Their petition was presented to Congress along with
the one from South Carolina and shared the same fate. Before this,
however, a bill to back the company was introduced. In the fall of
1794 John F. Scott had been sent to Georgia to obtain from the
Legislature a fulfillment of the contract and, if necessary, to
make concessions. On the refusal of the Legislature to accept his
proposals he proceeded to form another company, called the Upper
Mississippi Company, which soon obtained a large grant of territory.
Whether Scott's failure was in this venture was for himself
or for the company appeared to the congressional committee a ques-

¹ David Ross to Governor Randolph, April 10, 1791, Virginia
Calendar of State Papers, V, 11. Similar expressions were
credited to Henry, but with the significant addition that,
if the protection of Congress were not granted, they would
have recourse to their own means. Washington's diary, 193.

tion of such intricacy, that no satisfactory conclusion could be drawn. The participation of the company as a whole seems doubtful. 1

Patrick Henry's relations with the Virginia Yazoo Company are especially interesting by reason of certain charges made by Jefferson in a manuscript first published in 1837. 2 This manuscript, whose genuineness has not been questioned, is evidently the one furnished Wirt while he was preparing the life of Henry. The parts relating to the Yazoo purchase are as follows: "about the close of the war he (Henry) engaged in the Yazoo speculation & bought up a great deal of depreciated paper at $2/3$ & $2/3$ in the pound to pay for it. x x x x x from being the most violent of all anti-r' specialists however he was brought over to the new constitution by his Yazoo speculation, before mentioned. the Georgia legislature having declared that transaction fraudulent & void, the depreciated paper which he had bought up to pay for the Yazoo purchase was likely to remain on his hands worth nothing. But Hamilton's funding system came next & fortunately to his relief, and suddenly raised his paper from $2/3$ to $27/3$ the pound. Hamilton became now his idol", etc.

1 Public Lands, I, 172-173, 197-203.

2 It appeared first in the Phil. Colpitts American was reprinted in Lawson's Historical Magazine, August 1837 (New Series, Vol. II, No. 2).

over the company to the latter's agents, Jefferson's intentions are perfectly clear. In his letter, which seems to have escaped his critic, he says: "Arthur Campbell has been here. He is the enemy of P. Hney. He says the Yazoo bargain is like to drop with the consent of the purchasers. He explains it thus: they expected to pay for the lands in public paper at par, which they had bought at half a crown a pound. Since this is the value of the public papers, they have gained as much on that as they would have done by investing it in the Yazoo lands; perhaps more, as it puts a large sum of specie at their command, which they can turn to better account. They are, therefore, likely to acquiesce under the determination of the Government of Georgia to consider the contract as forfeited by non-payment".¹

It seems certain that the Virginia Yazoo Company had on hand a large amount in Georgia certificates, which in 1769 had been worth only two shillings six pence in the pound, - and that the value of these certificates was largely increased by the assumption of State debts. In this way the company received considerable compensation for the loss of their lands, and in the profits of the company Henry doubtless had a share.

¹ Jefferson to Washington, April 24, 1791, Works, III, 1-2, MSS. State Department Archives. See also his letter to Governor Morris, Works III, 15.

² Charlton's Life of James Jackson, Part I, VI-VII; Petition of minority of Georgia Delegates to Georgia Gazette, January 7, 1790; State Papers, Public Lands, I, 164, 165.

THE FENDERSON COMPANY.

The history of the Fenderson Company centers about Zach-
ariah Cox, one of the most adventurous adventurers in the South-west.
Cox had occupied lands near the Marsh Shoals in 1790. In 1791
he left his home and sailed for a settlement in that region,
commanding a flotilla the trade of the Fendersons had leading by
his report as through the Tombigbee to the Gulf. After the first
of 1791 had been secured, he and his associates, including John
Savier and John prominent men in East Tennessee, announced that
they would embark January 10, 1791, for the purpose of forming a
settlement near the Marsh Shoals. In all instances were of-
fered, and in it of course from the Prairie at the low water
place. The men were joined in practicing a black-horse and other
works of defense, but were forced to disband by the arrival of a
party of Cherokees. For this offense Cox and his companions were
twice indicted, but died with no result. The following were
able to escape and the remainder of the company were killed or
captured, just as in the case of the other companies. 1

1. State Papers, Indian Affairs, I, 111, 112, 113, 114, 115, 116,
117; R. Wallace's Civil War Political History, I, 11, 12,
13, 14; Putnam's History of Middle Tennessee, I, 11; R. Wallace's
Annals of Tennessee, 1800, 111; "Narrative of the War" (U.S. Army) I, 11;
Peters' Reminiscences of a Settlement by Z. Cox.

From the following sources: Indian Affairs, I, 111, 112, 113, 114, 115, 116,
117; R. Wallace's Civil War Political History, I, 11, 12, 13, 14;
Putnam's History of Middle Tennessee, I, 11; R. Wallace's
Annals of Tennessee, 1800, 111; "Narrative of the War" (U.S. Army) I, 11;
Peters' Reminiscences of a Settlement by Z. Cox. Cf. also the report of the Committee on Blount's Impediments).

Cox was not so well liked. He was a man of
trailing to the westward, his company was
by Jackson in 1791. He was one of the first to
large profit, but Cox was not one of the first to
of his commercial plans. He petitioned Congress for
a loan to enable him to carry on trade with the Indians, opposed
by troops and attempting a settlement. He fled at Nashville for
opening a land office, escaping at night only to be recaptured at
Nashville, planning canals to connect the Tennessee with the Com-
ber, and finally ending his restless life at New Orleans. 1

- 1 Public Lands, 101 (reservation for canals), 100, etc;
Gairdner's Mississippi, 130, 137; Haywood's Tennessee,
386, 387; Annals of Congress, March 30, 1793; State Papers,
Miscellaneous, I, 150; Cox's Estimate of commercial ad-
ventures by way of the Mississippi and Mobile Rivers, to
the western country.



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II.

THE LAND COMPANIES OF 1790.

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THE SECOND YAZOO SALE.

The failure of the ventures of 1790 did not diminish the fever of speculation. While the authors of the "Pine Bluff Speculation" were making enormous profits in the South of Georgia, the Legislature was importuned for a second grant of western territory. The first proposition came on November 12, 1794 from John Wares, agent for Albert Gallatin, A. J. Dallas, and Jared Ingersoll, who offered to buy all the land formerly granted to the South Carolina Company at the price which that company was to have paid. In this Wares probably received his instructions; certainly his principals disclaimed all further connection with his proposals. ¹ Wares's offer was small, however, compared to

those which soon followed. Petitions were received from four companies asking for the grant of the greater part of the State's western territory on the payment of \$2,000,000. These were referred to a joint committee, which on December 3 brought in a bill also-

¹ See Chapin's Miscellaneous of Georgia, II, 14-51.

² Vindication of the New England Mississippi Land Company, 32, Georgia Journal of Georgia House, p. 124.

within the companies' proposals. Another proposition was then introduced, but it was rejected, and all other amendments, including a bill to Governor Hatcher for signature. In a fit of pique, however, the Senate introduced it was vetoed. The Governor's objections were not based on constitutional grounds; he doubted whether the time had arrived for dividing of the territory, and that at that, if it was the proper time, the principle of monopoly was bad, that the price was too low, and that sufficient reservations had not been made for the State and its citizens. A bill which to meet these objections was then introduced. Aspin Wares appeared and outbid the other companies, but it had the same success as before.² The Legislature carried the bill through, the Governor yielded, and

¹ *Ib.*, 10, 11. He was associated with William Fox, late United States Senator from Georgia, General Twigg, and others, to whom he sold the Georgia Union Company.

² The refusal of Wares's offers has generally been considered a crowning proof of the corruption of the Legislature. It should, however, be said that his refusal was considered insufficient and the whole plan regarded as really a scheme on his part to bring about the creation of a court where for the entire 10 years he would receive a profit in the course of a year. The fact that each of his later proposals were made after the same manner of the others that well advanced gives color to the suspicion that his real design was to force the other companies to buy him out. C. H. Howell, *Dauphin Vindication*, 11, 12, 13. See also *ib.*, 11, 12, 13.

it became law January 7, 1820.¹

By this act the western part of the Upper Mississippi was sold for a cent an acre and there to be sold to purchasers. The lands of the Upper Mississippi Company lay in the extreme northwest, stretching southward twenty-five miles from the State boundary line and eastward from the Mississippi to the Tennessee.² The price was \$35,000. For the sum of \$50,000 the Tennessee Company obtained much the same territory as in 1791. The southeast was the region of the Georgia Mississippi Company, which paid \$155,000 for a grant bounded by the Mississippi, the Tombigbee, and latitudes 32° 40' and 31° 15'. The largest share fell to the Georgia Company. Its seven or eight million acres reached from the Mississippi to the Alabama with 32° as the northern limit and 31° 40' as the southern except east of the Tombigbee, where it dipped to 31°. For this they were to pay \$250,000. In each case a part (generally one-fifth) of the purchase money was to be deposited before the passage of the act. Payment of the remainder

¹ Stoyan's History of Georgia, II, 17-18.; Public Land, I, 112, 137. Governor Milledares' conduct in signing the bill has been the subject of much discussion. It has generally been held to be one to be commended rather than censure. See White's Statistics of Georgia, 30; Campbell's Miscellanies, II, 57; Gordon's Life of Troun, 11.

² See map, page 34.

as required by Public Law No. 1,179, 1890, to be secured by a mortgage on the land. The millinery acres were reserved for other citizens of Georgia. Their subscriptions entitled them to membership in one or other of the companies and their payments counted as part of the companies' purchase money. The State gave no guarantee against other claims and was not to be responsible for peace with the Indians. After the completion of certain Indian negotiations south of the Oconee the companies could apply for the concurrence of the United States in extinguishing the Indian title to their lands and within five years after such extinguishment must make settlements, a provision which indicates the speculative character of the transaction. The lands were declared free from taxation until their inheritance should be recommended in the Legislature. Sale to any foreign power was prohibited.¹

One of the noticeable features of the speculation is the number of prominent men who were engaged in it. James Wadsworth, the leading member of the Georgia Company, represented Georgia in the United States Senate. Matthew McAllister, his associate, was Georgia's attorney for the Georgia claims. Wade Hampton, president of the company, was one of the largest planters in South Caro-

¹ Act in Public Laws, I, 122; Public Affairs, I, 1; Watkins' Digest, 117.

ling, a member of Congress, III, 2, 25, and in the War of 1812. 1
Other Congressmen were Robert Goodloe Harper, Thomas Glascock, and
Thomas P. Catts. 2 Nathaniel P. Shelton a Federal judge, and
William Smith, one of the two judges of the Superior Courts of
Georgia, were implicated. 3 James Wilson, of the Supreme Court
of the United States, held shares to the amount of at least 750,000
acres, and, it is asserted, was influential in securing the sale. 4
Tennessee was represented by William Blount and John Sevier.

1 For an attempt to extenuate his conduct in the matter, see
the Charleston City Gazette, May, 1810, and cf. his letter
in Public Lands, I, 197. Further mention of his connection
with the lands in Thomas' Reminiscences of the Last Sixty-
Five Years, I, 30; Gallatin's Writings, I, 17.

2 See lists of shareholders, Public Lands, I, 111, 113, 110-116.

3 Hamilton's Works (N. Y. Edition) VIII, 371; Chappell's Miscel-
lanies, II, 1.

4 Chappell, 93, 94; White's Statistics, 50.

THE RESCINDING ACT OF 1851.

The enactment of the bill produced great popular indignation in Georgia. It was felt that the Legislature had given away a portion of the public property sufficient, in popular estimation, to fill a large bag to the State and furnish lumber in abundance to all the citizens. Many of the purchasers were notorious speculators, many were residents of other States. "Worse than all, many were members of the Legislature which passed the bill. "A more flagrant case of wholesale legislative corruption has never been known".¹ With but one exception, every member who voted for the act was a shareholder in one or more of the companies. "Georgia became a perilous residence for all concerned in the speculation". Gamblers in several places burned in effigy. Threats of violence were frequent. Even before the bill reached Governor Pitt Rivers received remonstrance from William H. Calhoun and other citizens of Columbia County. "We cannot see the propriety of any speculation, or purchase, or purchase of any kind of public property."

¹ A. S. John Randolph, p. 1.

² Compare the list of shareholders of the bill with the list of votes in the Legislature. Public Laws, I, 141, 142, or Brierley and Dunn's Laws of the United States, I, 533. See also the affidavit in Public Laws, I, 141-142.

³ Stevens, II, 72, 73; Whitell's Statistics, 20, 21; Calhoun, II, 114, 115-116; Gilmer's Statistics of the First Settlements of Upper Georgia, 193; Church's Address, March 30, 1851.

At the opening of the "Anti-Slavery" Convention, the first representative body of the constitutional convention, which met in 1845. It was one of the most popular bodies that this body of the state had ever seen. The convention, however, had been elected at the same time with the preceding Legislature and was dominated by the same interests. Influenced by this and possibly doubting its power to take any action, the convention merely ordered "that such petitions be received by our Secretary and laid before the next Legislature at their opening session;" adding that this was "a subject of importance calling for deliberate deliberation". 1

When the new Legislature met, early in January, 1796, it was with the avowed purpose of abrogating the obnoxious act. James Jackson had resigned his seat in the United States Senate and gone down to become a candidate for the Georgia House. As leader of the "Anti-Slavery" party he had published a series of letters to the people, in which he attacked the constitutionality of the sale and showed the loss that would come to the State and the possibility of subsequent disaster. 2 Opposition to the sale and

1. Journal of the Convention, 31. Fully one-third of the members were slaveholders in the preceding.

2. The letter of Jackson to the citizens of the State of Georgia, on the constitutionality, the policy, and the legality of the late sale of captured slaves, in the State of Georgia. August, 1795.

... in the latter ... "A-4-1" ...
... On ... January ... appointed a com-
... with Jackson ...
... validity of the ... A ... committee
... will, ...
... February 14,
... -

The rescinding act is an interesting document. It sets forth that the act of 1798 was in direct contravention of that part of the State Constitution which empowered the Legislature to make all laws and ordinances which they shall deem necessary and proper for the good of the State, which should not be referred to the Constitution. The act of the Senate and House, passed by the vote of 17 yeas and 10 nays, was a violation of the Constitution, inasmuch as it violated the territory into counties with representation in the Legislature and liability of taxation. Properly, the act of 1798 did not become a law, and the Constitution could only be amended by the people of the State.

1. Statutes, II, 114-117; P. S. Laws, I, 111-119; P. S. Laws, I, 114-117.

2. Article I, section 14.

3. Article I, section 17, giving the assembly power to lay out new counties and assign them representatives.

THE NEW CLAIMANTS.

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The legislatures of Georgia had done their best to undo the work of 1795, but the speculators were not to be so easily defeated. Many indeed took advantage of subsequent legislation to receive back their money,¹ but most of the others made haste to sell their lands outside of the State. Pamphlets setting forth the advantages of the lands and the title of the companies were prepared and circulated extensively throughout the Middle and Eastern States.² All the territory of the Upper Mississippi Company was sold in South Carolina.³ Agents of the other companies were sent to New England and opened an office in Boston, where they found a spirit of speculation highly favorable to their dealings. People flocked to them, excited by the higher prices asked each day. Purchases and sales followed fast. Buyers received only a general warranty; payment was partly in cash, chiefly in notes which the agents quickly disposed of. By February 21, 1796, when news of the proposed repeal arrived, large purchases had been made

1 Marbury and Crawford's Digest, 501, 503; Laws of 1811, 103; Haden's Troup, 50. List of those repaid in Public Lands, I, 150.

2 State of facts, showing the right of certain companies to the lands lately purchased by them from Georgia. Grant to the Georgia Mississippi Company, the constitution thereof, etc. Published by order of the directors.

3 Public Lands, I, 137, 138.

from the time it was known as a company, while the Mississippi Company had not yet received the passage of the rescinding act and a conveyance of eleven million acres for ten cents an acre. Many men of prominence soon became concerned - James Sullivan, Samuel Dexter, H. G. Otis, Perez Morton, Gideon Granger. "Every class of man, from watch-makers, mill-wrights, and mechanics of all descriptions, eagerly ran after this deception". Boston alone sank over two million dollars.¹

When the rescinding act was announced in Boston (March 1.), it became the chief local topic of conversation and gave rise to a newspaper and pamphlet controversy which continued several years.² Undiscovered the purchasers organized and prepared to enforce their claims. Still the determined opposition of Georgia and the destruction of all records of the sale made recovery difficult, and the lack of any return on the large investment had produced much distress,³ when the transfer to the United States of all Georgia's rights to the territory gave Congress power to compromise.

¹ La Roche-foucauld's Travels, III, 412-413; Public Lanes, I, 210, 210-41, II, 845; Columbian Centinel, February 11, 1793; Report on the New England Mississippi Land Company, Senate Document No. 45, 13d Congress, First session.

² Columbian Centinel, March 11, 1793. For the titles of some of the pamphlets see the Bibliography.

³ Fisher Ames' Works, I, 215; La Roche-foucauld, III, 412.

THE GEORGIA CESSION.

A copy of the act of 1795, sent to Washington just after its passage, had been transmitted to Congress as an object of magnitude which might deeply affect the peace and welfare of the country. The message was considered at length in both Houses, but, to the President's regret, two bills brought in to protect the Indians against invaders failed, primarily because of partisan opposition.¹ A strict regulation of intercourse with the Indians was however obtained from the next Congress,² while a report of the Attorney General led to a long discussion over Georgia's title, resulting in 1796 in the passage of a law which authorized the appointment of commissioners to adjust the conflicting claims of the two governments and receive any proposals of cession.³ To this Georgia consented, appointing Governor Milledge and Senators Jackson and Baldwin as her commissioners,⁴ while the United

¹ Indian Affairs, I, 1, 368; Annals of Congress; Washington's Writings (ed. Sparks), XI, 1; J. C. Hamilton's History of the Republic, VI, 120. Cf. Fisher Ames' Works, I, 167.

² Statutes at Large, I, 169.

³ Statutes at Large, I, 114, II, 26; Public Laws, 1795, 11, 19.

⁴ Laws of 1800, 17.

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THE COMMISSIONERS AND THE
YAZOO CLAIMS.

By a law of 1800¹ the Federal commission² were directed to inquire into the report upon the claims of individuals in the southwestern territory, a task of difficulty and importance. Their report contains, besides observations on earlier British, Spanish, and Georgian grants, a great mass of material on the Yazoo claims, as the claims based on the sales of 1789 and 1796 had come to be called. In the opinion of the commissioners the claimants' title could not be supported, yet in view of the equitable considerations which most of them could plead and the great amount of litigation that would result from the confusion of claims, it was thought that a reasonable accommodation would be expedient. Rejecting the purchasers' propositions to compensate at twenty-five cents an acre (or about \$30,000,000 with interest from 1800), they recommended as the basis of settlement either the grant of the 5,000,000 acres reserved in the cession (after satisfying settlers' claims), or the option of receiving \$1,500,000 in interest-bearing certificates or \$5,000,000 without interest, to be shared among the companies in proportion to the purchase-money.³

¹ Statutes at Large, I, 519.

² Public Laws, I, 135-136.

THE CLAIMS IN CONFLICT.

The report received from the House, February 1, 1894, concerning the Indian title to the tract of March 2, the basis of the land claim to the Mississippi territory. In this it was accepted that the Indians of the tract had 5,000,000 acres should be applied to the quieting of each of the Indian claims. Congress might see fit to provide for. No claims should be satisfied unless proper evidence was exhibited before a fixed date, and the commissioners were empowered to receive further propositions or compromises. During the session on the report the Indians prevailed to have the claims of 1795 before the House of the House. This their rights decline to the ground of insufficient preparation, but they agreed to accept the claim that would be proposed terms of settlement. Although the point was often evaded in later discussions, the act expressly disclaimed recognition or in any way affecting the claimants' claims. It hardly seems possible a future court, or a case that would be of it are of slight importance.

¹ Statutes at Large, II, 229; Annals of Congress, February, 1894. Public Law, I, 189.

could not have been given any other than a legal opinion occasioned by the case lit.

Early in 1804 the case was introduced into the House and referred to the Committee of the House a Bill authorizing commissioners to settle the Yamac claims according to what they should deem the best interests of the United States. February 20, Randolph, in order "to place the subject in such a point of light that every eye, however dim, might see distinctly, its true merits", offered a set of eight resolutions. They declared that the Georgia Legislature had never been empowered to cede territory "in any manner whatever, and for the public good"; that when the governors of any people are exercised their authority to the public detriment, it was the undoubted right of the people to revoke the authority thus abused; that the House had it in view when that the Yamac sale was exempt; that the sale had been declared void by a subsequent Legislature, acting within its authorized rights and violating no constitutional provision; that the claims and debts were owing by a set of the United States; and therefore that no part of the Treasury or five million acres should be appropriated to satisfy the claims under the questioned act of 1791. 4

* For a full and complete history of the Yamac case, see the Annual Report of Congress on "Hanson's Affidavit", which is often quite satisfactory.

and after in the Mississippi to large numbers of the

of the Mississippi, and in the Mississippi, and "Fire the brimstone
open", Dr. Cotton called it.

Postmaster-General Granger had appeared as one of the
agents of the New England Mississippi Company, an organization
composed of the purchasers from the Georgia Mississippi Company.
This impropriety on Granger's part drew Randolph into a vehement
invective against him. "His gigantic grasp embraces with one hand
the shores of Lake Erie, and stretches with the other to the Bay
of Mobile. Millions of acres are easily digested by such stomachs.
x x x x x They buy, and sell corruption in the gross, and a
few millions, more or less, are hardly felt in the account. x x x
When I see the agency that has been employed on this occasion,
I must own that it fills me with apprehension and alarm. x x x x
Are heads of Executive Departments of the Government to be brought
into this House, with all the influence and patronage attached to
them, to extort from us, now, what was refused at the last session
of Congress?" Then, turning on the Northern Democrats, he said;
"What is the spirit against which we now struggle, and which we
have vainly endeavored to stifle? A monster of greed and fraud,
fed in corruption, that in vain will we wait its disappearance. It is
the spirit of Fuglism! What spirit will we consider as the

of the Georgia House, where it was introduced by Mr. Bibb, of the Georgia House, in 1807. It was then referred to a committee, and the committee reported in favor of it. The House then passed it, and it was sent to the Senate. The Senate also passed it, and it was then sent to the President. The President then signed it, and it became a law. The law then gave the Georgia House the right to investigate the Yazoo claims. The Georgia House then sent a committee to investigate the claims. The committee then reported back to the House, and the House then passed a resolution which directed the Governor to petition Congress with regard to the Yazoo claims, requesting an impartial investigation and an equitable compromise. 1 When Bacon presented Governor Sullivan's memorial to the House and moved that it be referred to a committee, an angry debate arose. The tone of the Georgia members was particularly violent. Bibb moved immediate rejection, while Ingham, famous as Governor of the State at the time of the Cherokee troubles, was inclined to throw the petition overboard. Randolph's desire for immediate rejection in order to prevent another crisis in the party was shared by Georgia's dislike of the existence of such a crisis.

1. Avery's Life of James Sullivan, II, 212.

THE COMPROMISE OF 1850

$$p_{\text{max}} = \lim_{\lambda \rightarrow 0} p_{\text{max}}(\lambda) = \frac{1}{2} \left(1 + \frac{1}{\sqrt{1 + 4A}} \right), \quad A = \frac{1}{2} \left(\frac{1}{\gamma} + \frac{1}{\beta} \right).$$

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B I B L I O G R A P H Y .

The best sketch of the Yazoo land companies is that by Alexander Johnston in Lalor's Cyclopaedia of Political Science (III, 1135-1150). McKim's account (II, 473-480) is interesting, but his note in the Narrative and Critical History of America (VII, 381) is quite as bad. The chapter in A. H. Chapin's Miscellaneous of Georgia is useful but diffuse and one-sided. Stevens' History of Georgia is of service. The only extensive account is published by George White in 1842 (The Yazoo Period). See also his Statistics of Georgia, 1847. There is a short article on the subject read in the centennial number of the Georgia Chronicle, Jan. 1894. The chief original source is the volumes on Public Lands in the American State Papers.

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